

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

GLORIA ANDERSON,

Plaintiff,

v.

THE MERCER COUNTY SHERIFF'S
DEPARTMENT, et al.

Defendants.

Civil Action No.: 11-cv-7620 (PGS)

MEMORANDUM AND ORDER

SHERIDAN, U.S.D.J.

This matter is before the Court on a motion for summary judgment brought by Defendant, The Mercer County Sheriff's Department (ECF No. 195).

I.

On December 30, 2011, Plaintiff filed the original Complaint in this action as a *pro se* Plaintiff, naming eleven defendants. (ECF No. 1).¹ On June 15, 2012, Judge Pisano entered an order dismissing the State of New Jersey. Plaintiff filed an Amended Complaint on July 16, 2012, asserting claims against Mercer County Sheriff's Office, the County of Mercer, the Mercer County Administrator, and PBA Local 187. On February 28, 2013, Judge Pisano dismissed all of the Defendants, except the Mercer County Sheriff's Office and PBA Local 187. Judge Pisano thereafter dismissed all claims against the PBA Local 187 on January 29, 2015. (ECF No. 111). As such, Mercer County Sheriff's Office is the sole remaining Defendant in this action. The Sheriff's Office now moves for summary judgment on the remaining claims of: Title VII, Race Discrimination (Count I), Gender Discrimination (Count VIII); and Retaliation (Count II); and the

¹ Plaintiff filed an EEOC complaint on December 31, 2010, in which she alleged that she had been denied certain desired assignments and overtime as a result of her race and gender. *See* ECF No. 37, pg. 8.

(Conscientious Employee Protection Act CEPA), based only on alleged retaliatory events that occurred after December 30, 2010 (Count IV).

The Amended Complaint consists of 61 paragraphs of alleged facts, followed by the eight Counts, four of which remain. Within the 61 paragraphs of alleged facts, the Amended Complaint depicts various incidences of alleged adverse treatment in connection with Plaintiff's employment. Plaintiff also contends that Officers "less senior" than her were treated more favorably², that she was sexually harassed, and that she was denied over-time hours and pay for retaliatory reasons.

The Amended Complaint is not precise and it is difficult to assess how each alleged incident is related to the alleged causes of action. In addition, Plaintiff asserts more alleged incidents of discriminatory conduct in her opposition to the summary judgment motion than were originally asserted in the Amended Complaint. In light of same, each incident is reviewed separately below.

II.

Generally, Plaintiff began her employment with the Mercer County Sheriff's Office in 1992 and retired in 2014. She was a member of the PBA Local 187 Labor Union. Plaintiff was assigned to the Child Support Hearing Officers at the Mercer County Courthouse in Trenton, New Jersey for twelve years.

Corbin Incident (Amended Complaint ¶¶ 9-14.)

On September 24, 2009, Christopher Corbin allegedly insulted Plaintiff on a staff transport bus by "calling her an offensive name in a disdainful and demeaning manner in the presence of county staff and her fellow Sheriff Officers." Discovery revealed that Plaintiff, in a memorandum to Lt.

² By use of the words "less senior," Plaintiff may be inferring an age discrimination claim or a breach of the collective bargaining agreement – no such cause of action was alleged.

Samonski alleged that Officer Corbin said to Plaintiff, “Don’t call me on the speaker phone,” and allegedly told her that she must be “stupid”. (Kemler Cert. ¶ 32 Ex. 10).

According to Plaintiff, the incident was initially reported to the sergeant on duty, Sergeant Harold Fowler, an African American officer. Thereafter, the investigation was assigned to Sergeant Patakula. Plaintiff was upset with this change of the investigator because according to her, Sergeant Patakula was a “white” friend of Officer Corbin. Plaintiff further alleges that Patakula did not conduct a thorough investigation. According to her Complaint, Patakula accused Anderson of being too polite, and told her that he would instruct Corbin to behave respectfully and professionally toward her. On October 13, 2009, Plaintiff wrote a memorandum to Lieutenant Patricia Samonski regarding her dissatisfaction with the investigation. She did not receive an answer. On December 4, 2009, Plaintiff wrote a letter to Kevin Larkin, then Mercer County Sheriff, regarding the Officer Corbin incident.

Special Accommodations and Overtime (Amended Complaint ¶¶ 15-17; ¶¶ 38-40)

Within the December 4, 2009 letter to Sheriff Kevin Larkin, Plaintiff also complained about alleged unfair distribution of overtime. Plaintiff alleges “special accommodations,” including extra overtime, training and promotion opportunities, which Anderson claimed were special privileges, were “reserved for white officers”, and that black officers were never assigned these “special privileges.” According to Plaintiff, Larkin did not respond to the letter; but in December 2009 she was allegedly interviewed in an intimidating manner and instructed to keep her complaints on the “down low” and not hire an attorney.³ (Andersen Cert. ¶46).

In early 2010, Plaintiff was transferred to the Criminal Courthouse which allegedly denied her an opportunity to work overtime. She points specifically to Officer Darryl Taylor who

³ Plaintiff does not identify who interviewed her in an intimidating manner.

allegedly consistently allowed “white officers” to work overtime but denied Plaintiff. Plaintiff was also allegedly denied overtime by Sergeant Charles Wert. (Amend. Compl. ¶¶38-40). The Amended Complaint does not explain the circumstances of how this occurred. Plaintiff was moved back to the Civil Courthouse building at 175 Broad Street in 2011 and again reassigned to the Criminal Courthouse in 2012.

Transfer to Criminal Court (Amended Complaint ¶¶ 18-29).

In December 2009, Plaintiff began hearing rumors that she would be transferred from her long-term assignment with the Child Support Hearing Officers at the courthouse. Plaintiff alleges that the transfer to the criminal courthouse was in retaliation for the complaints in her letter to Sheriff Larkin about disparate treatment of African American Sheriff Officers.

Anderson requested to stay in her former assignment, but her request was denied. Plaintiff was transferred to the Criminal Courthouse on January 4, 2010. Allegedly, Plaintiff was replaced by a white officer who had less seniority than her. In addition, she avers that two white officers similarly requested that they not be transferred to the Criminal Courthouse, and their requests were granted.

Defendant rebuts these accusations, noting first, that there were fifteen officers including Plaintiff who were transferred, and those officers were of diverse backgrounds. Second, Defendant explains that such re-assignments are made twice a year in January and July. Third, in a letter dated January 21, 2010, Sheriff Larkin explained that two officers (Officer Perez and Bonifazi) were continuing in their assignments in the Civil Courthouse at the request of the Superior Court Judges to whom they had been assigned. Another officer, who was not transferred, had presented a letter from a physician indicating that reallocation to the Criminal Courthouse would exacerbate his existing health condition.

Medical Reasons for Request not to be Transferred (Amended Complaint ¶ 30).

Plaintiff also alleges that Defendant knew that the Criminal Courthouse was “medically unsafe”, but that she was transferred there anyway. Plaintiff alleges that exposure to asbestos was causing her to have some medical issues. According to Plaintiff, in April, 2012, her physician advised her that she should not work in a building contaminated with asbestos, and Plaintiff allegedly submitted a note from her physician regarding same⁴. According to Plaintiff, after she delivered the note from her doctor, Undersheriff Ellison, an African American officer, and Defendant Richard Piotrowski asked her to surrender her weapon and report to the county’s doctor to see if she was fit for duty. (Amended Complaint ¶¶57-59). Plaintiff alleges that she was forced to walk to the doctor’s office without her weapon or uniform. She alleges that this command placed her in danger from detainees and it was mandated as a means of retaliating against her for filing her doctor’s note. (*Id.*)

Defendant rebuts this allegation by noting that all officers are required to store their service weapon at the Sheriff’s office prior to visiting the County doctor. As a matter of policy and safety, officers are prohibited from bringing weapons into the doctor’s office. (Ellison Cert. ¶6). Further, Defendant rebuts that Plaintiff was not forced to walk, or placed in danger, but was instead driven to the parking garage to obtain her personal vehicle, which she drove to the County Doctor. (Ellison Cert. ¶7).

After being examined by the County doctor, Plaintiff did not return to work for a few days due to high blood pressure. When she returned, she had a note from her personal physician clearing her to return to work. (Ellison Cert. ¶9).

⁴ There is no evidence, medical records or expert reports submitted to support Plaintiff’s claim regarding her health issues.

Sexual Harassment Claim (Amended Complaint ¶ 41-53)

Plaintiff's claim of sexual harassment relates to an incident that occurred in July, 2011, when she was working at the back security door entrance to 175 Broad Street building, on the ground floor. At that time, a revealing photo of a woman from the local newspaper (commonly referred to as a "page 6 photo") was placed on her worksite. Plaintiff requested that the incident be investigated, as there were cameras in that area. Plaintiff informed her supervisor, Sergeant Seth Barton, who confiscated the photo and refused to provide her with a copy, but instead instructed her to write a memorandum about the incident. As she typed the memo, Plaintiff requested computer assistance from one of her fellow Officers; however, he denied Plaintiff's request because he had been instructed by Sergeant Patukula not to assist Plaintiff. Plaintiff completed her memo and the case was assigned to internal affairs. On July 20, 2011, Plaintiff was interviewed by Sergeant Nolan about the incident. Plaintiff was again interviewed on August 10, 2011. During that interview, she claims she was coerced and threatened into rewriting her original statement. She was told that if she refused to rewrite the statement she would be charged with insubordination. There are no recordings or transcripts of this interview. On September 2, 2011, Plaintiff was charged with making a false statement, based on the re-written statement, and was threatened with a five days suspension. After a hearing, the disciplinary charges were dismissed.

The Officer responsible for placing the photo at Plaintiff's work station, Officer Jeffrey Ficarro, was reprimanded. (Kemler Cert. ¶54; Exhibit 26).

Seniority Allegations (Amended Complaint ¶55; 61)⁵

Plaintiff argues that she was denied assignments that she requested in 2012. She argues that her name was removed from the bidding sheet wherein a Sheriff Officer may request

⁵ See footnote 1. Plaintiff has not alleged an age discrimination claim.

assignments. Plaintiff alleges that the requests of the white officers with less seniority were maintained on the bidding sheet, while her requests were not. Plaintiff alleges that her name was also removed on a second occasion in June 2012, and that the positions she had requested were ultimately assigned to white male officers with less seniority. In response, Lieutenant Schoellkopf testified that Plaintiff never signed up for those assignments.

Plaintiff alleges that the practice of shift-bidding has a discriminatory effect (Anderson Cert. ¶79; Amend Comp. ¶54-56) because it allows the Sheriff to assign any officer regardless of seniority to jobs that afford tremendous overtime and training opportunities. (Anderson Cert. ¶80).

Defendant explains that the shift bidding process is a semi-annual process in which Sheriff's Officers the Court Division bid for shift assignments, but not the specific duty assignment. The assignment of such a request is based upon seniority. (Kemler Cert. ¶8-10). Defendant contends that Plaintiff attempted to choose her specific duty assignment through the bidding process. The Sheriff's Office deemed this to be improper. (Kemler Cert. ¶10). For that reason, her requests for specific duty assignments were removed from the shift-bidding sheets. (*Id.*).

Evidence of Discriminatory Assignment of Overtime Hours

Plaintiff alleges that she was discriminated against because white officers received overtime hours, while black officers did not. In order to substantiate her claim, Plaintiff annexes three exhibits entitled "Black Officer's Overtime Hours" (Rider A), "White Officer's Overtime Hours" (Rider B) and a listing of officers by the section to which each was assigned (for example, transportation, internal affairs, detective and airport). Within this list, Rider C is a section of the list referring to transportation officers for the year 2016. Plaintiff's allegations are analyzed against the annexed Riders.

In Ms. Anderson's certification, Plaintiff makes a conclusory allegation that "white officers earn more on average than black officers." The source of this conclusion is derived from Riders A and B.

Rider A is an unauthenticated document. There is no proof that it contains an accurate listing of all black officers, or that it accurately records the overtime hours. Plaintiff calculates a simple average by adding all overtime hours of Black officers together, and then dividing it by the number of black officers. Assuming the math is correct, Plaintiff finds that the average number of overtime hours for black offices for the year 2009 is 82, and 62.5 hours for 2010.

Plaintiff then calculates the average overtime hours for the white officers (Rider B). Utilizing the same method as described above, Plaintiff concluded that the average number of overtime hours for white officers was 118 hours in 2009, and 94 hours in 2010.

In comparing the overtime hours of black officers to white officers in 2009, white officers averaged more overtime (82/118); and similarly in 2010, white officers had more overtime hours (62.5/94). Plaintiff thereby concludes that an average black officer had fewer overtime hours. However, this comparison is faulty. The comparison does not factor in certain variables. For example, there may have been an extraordinary case being held at the Courthouse requiring extra personnel, or certain personnel may have been assigned special duties based on judges' preference. In addition, the charts do not distinguish the officers by rank, which could also be a factor to explain the additional overtime. Moreover, the facts relied upon may be in error. For instance, Plaintiff focused on overtime hours for officers in the transportation section (discussed below) but when comparing Rider C to the white officers' overtime hours in Rider B, two officers (Kelly Gogan and Tara Hendryx) listed in Rider C do not appear on either Rider A or Rider B. Plaintiff does not provide an explanation for this difference. In conclusion, the statements and exhibits

presented by Plaintiff regarding the average hours of the officers are so imprecise that they cannot be relied upon.

In Ms. Anderson's certification, she asserts for the first time in the litigation, that in 2009 she was assigned to the transportation unit where she worked 101 hours of overtime. She asserts that the transportation assignment with the Mercer County Sheriff Office is an assignment where officers are able to accrue a great deal of overtime; and that her transfer caused her to lose a great amount of overtime hours and pay. Plaintiff supports these assertions by relying upon a document entitled "hourly history detail" (Rider D). Rider D shows that Plaintiff had 101.5 hours of overtime in 2009, and 52.5 hours in 2010. Both pages are captioned as "constitutional/sheriff/public safety salaries." There is no reference to the transportation unit employees on either page. Moreover, if one compares Ms. Anderson to the other officers who she identifies as white (w), it does not show any pattern of overtime hours being assigned to white officers. In fact, Anderson had more overtime than some officers, and less than others.

For example:

	<u>2009</u>	<u>2010</u>
Allen ⁶	19	0
Altobelli (w)	43.5	0
Anderson (b)	101.5	52.5
Armano (w)	255.5	199.5
Armetage (w)	72.0	30.0
Barato (w)	62.0	53.0

In conclusion, the charts submitted to establish discriminatory conduct do not show any such conduct; and accordingly lack merit.

⁶ Allen is not identified by race.

LEGAL STANDARD

Summary judgment is appropriate under Fed. R. Civ. P. 56(c) when the moving party demonstrates that there is no genuine issue of material fact and the evidence establishes the moving party's entitlement to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A factual dispute is genuine if a reasonable jury could return a verdict for the non-movant, and it is material if, under the substantive law, it would affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence "is to be believed and all justifiable inferences are to be drawn in his favor." *Marino v. Indus. Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004) (quoting *Anderson*, 477 U.S. at 255).

Once the moving party has satisfied its initial burden, the party opposing the motion must establish that a genuine issue of material fact exists. *Jersey Cent. Power & Light Co. v. Lacey Twp.*, 772 F.2d 1103, 1109 (3d Cir. 1985). The party opposing the motion for summary judgment cannot rest on mere allegations and instead must present actual evidence that creates a genuine issue of material fact. *Anderson*, 477 U.S. at 248; *Siegel Transfer, Inc. v. Carrier Express, Inc.*, 54 F.3d 1125, 1130-31 (3d Cir. 1995). "[U]nsupported allegations . . . and pleadings are insufficient to repel summary judgment." *Schoch v. First Fidelity Bancorp.*, 912 F.2d 654, 657 (3d Cir. 1990); *see also* Fed. R. Civ. P. 56(e) (requiring nonmoving party to set forth specific facts showing that there is a genuine issue for trial"). Moreover, only disputes over facts that might affect the outcome of the lawsuit under governing law will preclude the entry of summary judgment. *Anderson*, 477 U.S. at 247-48. If a court determines, after drawing all inferences in favor of [the non-moving party], and making all credibility determinations in his favor "that no

reasonable jury could find for him, summary judgment is appropriate.” *Alevras v. Tacopina*, 226 Fed. App’x. 222, 227 (3d Cir. 2007).

Race and Gender Discrimination

Plaintiff alleges that the Sheriff’s Office committed race and gender discrimination by failing to assign overtime hours to female and black officers. Both causes of action for race and gender discrimination are analyzed under the same standard. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and later clarified in *Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248 (1981), and *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502 (1993); *see also Schurr v. Resorts Int’l Hotel, Inc.*, 196 F.3d 486, 498 (3d Cir. 1999) (Analysis of a claim made pursuant to the NJLAD generally follows analysis of a Title VII claim.). *McDonnell Douglas* has a burden shifting three step process. *Hicks*, 509 U.S. at 506. Here, Plaintiff does not meet the first step, failing to set forth a prima facie case. This step is reviewed below.

To establish such a prima facie case, Plaintiff must show that (1) she is a member of a protected class; (2) she is qualified for the position in question; (3) she suffered from an adverse employment decision; and (4) the employer sought to or did fill the position with a similarly qualified person who was not a member of the protected class. *McDonnell Douglas*, 411 U.S. at 802.

Plaintiff meets prongs one and two of the test, as she is black and female, and she has performed satisfactory work. Plaintiff fails to meet prong three since she has not shown an adverse action.

Title VII specifically prohibits actions which would “deprive or tend to deprive any individuals of employment opportunities or otherwise adversely affect his status as an employee.” 42 U.S.C. § 2000e-2(a). The Supreme Court has defined a tangible, adverse employment action as

a “significant change in employment status, such as hiring, firing, failing to promote, reassignment, or a decision causing a significant change in benefits.” *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 749, 3 (1998). *See Weston v. Pennsylvania*, 251 F.3d 420, 430-431 (3rd Cir. 2001). A transfer or demotion may suffice to prove an adverse employment action. *See Jones*, 198 F.3d at 412; *See, e.g., Torre v. Casio, Inc.*, 42 F.3d 825, 831 n.7 (reversing the District Court’s grant of summary judgment and recognizing that a job transfer, even without loss of pay or benefits, may, in some circumstances, constitute an adverse job action); *see also McGrenaghan v. St. Denis Sch.*, 979 F. Supp. 323, 326 (E.D. Pa. 1997) (also holding that a job transfer even without loss of pay or benefits may constitute an adverse job action where the terms, conditions or privileges of employment vary). Nevertheless, Plaintiff must still prove that such adverse action was motivated by discriminatory reasons.

As noted above, Plaintiff relies on two different theories to show an adverse action. First is a comparison of overtime hours between white officers and black officers; and second, by comparing transportation section employees to black officers. Plaintiff’s claim is that she was denied overtime hours which white officers received. Her proofs do not demonstrate this. As set forth above, the average hours of overtime between white and black officers (Riders A and B) are based on an unauthenticated document. Rider C shows two officers (Kelly Gogan and Tara Hendryx) who do not appear on Riders A and B. As such, the argument set forth through the Riders lacks substance.

Plaintiff’s second argument is that the Sheriff’s Officers within the transportation section are mainly white officers, and that those officers receive more overtime than black officers. Plaintiff alleges that in 2009 she was assigned to the transportation section and that she worked 101.5 hours of overtime, and in 2010, after being transferred to the Court section, she had 52.5

hours of overtime. Plaintiff relies on Rider D, a document that lists employees as “constitutional/sheriff public safety salaries,” but there is nothing that compares transportation section employees to black employees. As such, the documents relied upon, and alleged facts therein, do not sufficiently explain the claim.

There is a second reason to deny the claim. Plaintiff’s argument about the transportation unit was first raised in her opposition to this motion for summary judgment and again at oral argument. It was never raised in the Amended Complaint, and was not disclosed during discovery. Defendant argued in its brief that “it would be unfair to now allow Plaintiff to base that claim on entirely different facts and theories.” *J. Lloyd Int’l, Inc. v. Testor Corp.*, 2010 U.S. Dist. LEXIS 13414, *16-18 (Iowa, February 17, 2010); *See N. States Power Co. v. Fed. Transit Admin.*, 358 F.3d 1050, 1057 (8th Cir. 2004) (“[W]hile we recognize that the pleading requirements under the Federal Rules are relatively permissive, they do not entitle parties to manufacture claims, which were not pled, late into the litigation for the purpose of avoiding summary judgment.”); *see also Satcher v. Univ. of Ark. at Pine Bluff Bd. of Trs.*, 558 F.3d 731, 735 (8th Cir. 2009) (rejecting plaintiff’s attempts to “expand his claims in his brief” by asserting facts not raised in the complaint). Here, Defendant has a meritorious argument, and it is far too late to bring this new theory into the case when it has been pending for more than five years.

In conclusion, Defendant’s motion for summary judgment based on race and gender discrimination is granted.

Retaliation

Plaintiff argues that she was retaliated against after she (1) completed a survey and answered “yes” when asked whether there was discrimination in the Mercer County Sheriff’s

Office; and (2) submitted a letter about overtime abuse in the Mercer County Sheriff Department, after she filed a sexual harassment complaint against Officer Corbin.

According to Plaintiff, the retaliatory action was her transfer from the Civil Courthouse (later argued to be a transfer from the transportation section) to the Criminal Courthouse. Other alleged retaliatory actions were: being deprived overtime, and being placed in danger by management requiring her to leave her weapon at headquarters while attending an appointment with a doctor retained by Mercer County.

To establish a prima facie case of retaliation under Title VII, a plaintiff must show that: (1) she engaged in an activity protected by Title VII; (2) the employer took an adverse employment action against her; and (3) there was a causal connection between her participation in the protected activity and the adverse employment action." *Moore v. City of Philadelphia*, 461 F.3d 331, 340-41 (3d Cir. 2006) (citation omitted). The burden shifting framework follows the same three steps as presented above.

Defendant argues that Plaintiff failed to meet the requirements for a retaliation claim. Plaintiff argues that the December, 2009 letter to Sheriff Larkin is the protected activity, at which time she raised concerns about special accommodations for white officers. For the "adverse employment action" element, a plaintiff must show that a reasonable employee would have found the alleged retaliatory actions "materially adverse" in that they "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Id.* (quoting *Burlington Northern & Santa Fe Ry. Co., v. White*, 548 U.S. 53, 67 (2006)) (explaining that the "anti-retaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm"). Here, Plaintiff argues that the adverse employment action is that she was transferred from the transportation section or the Child Support Hearing Officers section

to the Criminal Courthouse. To establish the third element, “a plaintiff must show a causal connection between the plaintiff's opposition to, or participation in proceedings against, unlawful discrimination, and an action that might have dissuaded a reasonable worker from making or supporting a charge of discrimination”. *Burlington Northern & Santa Fe Ry. Co., v. White*, 548 U.S. 53, 67, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006). Additionally, a plaintiff must show that the temporal proximity of the protected activity and the employment action is “unduly suggestive.” *Deans v. Kennedy House, Inc.*, 587 F. App'x 731, 735 (3d Cir. 2014) (citing *Williams v. Phila. Hous. Auth. Police Dep't*, 380 F.3d 751, 760 (3d Cir. 2004)) (finding that the plaintiff's termination more than two months after he filed his second EEOC charge not so close as to be unduly suggestive).

Here, Plaintiff sent a letter to Sheriff Larkin regarding the alleged discrimination in overtime distribution on December 4, 2009. She allegedly “expressed [her] frustration regarding the disparate treatment of African American Officers with respect to un-posted assignments that white officers were permitted to receive, lack of training opportunities for African American officers, extra overtime for white favored officers, and ‘no lunch overtime’ instituted specifically to give extra money to white officers.” (Anderson Cert. ¶26; *see also* Amend. Comp. ¶15). She began hearing rumors of her transfer in December, 2009. She does not specify whether that was early or late in the month. She was transferred in January 2010. The facts as presented by Plaintiff may suggest a temporal connection. However, Plaintiff has failed to disprove the legitimate explanations presented by Defendant with facts that could lead a reasonable jury to “determine that [Defendant]’s stated reason . . . is pretextual.” *Borgese v. Dean Foods Co.*, 2017 U.S. Dist. LEXIS 98803, *14, 2017 WL 2780742 (D.N.J. June 26, 2017). For example, Defendant explained

that transfers usually occur in January and July, and that fifteen other officers were transferred at the time Plaintiff was transferred.

Overall, Plaintiff has not provided any direct evidence of retaliation and candidly, her facts appears to be amiss because it is unclear whether Plaintiff worked at the Child Support Hearing Officer's section, or at transportation in 2009. Further, the transfer alone is not necessarily enough to show retaliation, nor sufficient by itself to show an adverse action. The Court recognizes that a supervisor's requirement that an employee perform an undesirable aspect of the job more than other employees may be considered adverse employment action. *See Moore v. Beers*, 2017 U.S. Dist. LEXIS 17498, *14 (Feb. 8, 2017). The Supreme Court noted that "[a]lmost every job category involves some responsibilities and duties that are less desirable than others. Common sense suggests that one good way to discourage an employee. . . from bringing discrimination charges would be to insist that she spend more time performing the more arduous duties and less time performing those that are easier or more agreeable." *Id.* (quoting *Burlington Northern and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 70-71 (2006)). Nevertheless, Plaintiff's accusations without sufficient proof to show that Defendant's actions were motivated by illegitimate motives are not sufficient to maintain a claim for retaliation and establish a sufficient link. *Moore v. Beers*, 2017 U.S. Dist. LEXIS 17498, *14.

An essential job of every Sheriff's officer is to secure the criminal courthouse, like all other courthouses, where judges, jurors, witnesses and others appear for hearings. The assignment Plaintiff was asked to perform at the Criminal Courthouse fell under her job description. The basis for Plaintiff's retaliation claims are substantially the same as for her discrimination claim. Defendant presented a legitimate reason for Plaintiff's transfer and justified the timing of the transfer. Defendant also explained that Plaintiff had to leave her weapon behind when going to the

County doctor because that was required of all officers. Plaintiff failed to rebut with direct or circumstantial evidence that Defendant's reasons were a pretext. *See Kant v. Seton Hall Univ.*, 2008 U.S. Dist. LEXIS 638, *40 (D.N.J. Jan. 3, 2008). Based on the evidence provided, a reasonable fact-finder could not conclude that Plaintiff was transferred due to retaliatory reasons. Thus, the motion for summary judgment with regard to the retaliation claims is granted.

CEPA Claim (Events after 2010)

Plaintiff's CEPA claims are barred by the statute of limitations. The statute permits an aggrieved employee or former employee to institute a civil action in a court of competent jurisdiction within one year. N.J.S.A. § 34:19-5. Since the Complaint was filed on December 30, 2011, Judge Pisano ruled that any CEPA action occurring before December 30, 2010 was time barred. (February 28, 2013 Opinion of Judge Pisano, ECF No. 37, p. 14-15). In reviewing Plaintiff's brief, the Court notes that Plaintiff identifies the whistle-blowing activity on which her CEPA claim is based as "when she raised the issue of overtime abuse she was retaliated against by the transfer to the criminal court building" (Plaintiff's Brief in Opposition, p. 44). This reference is to Plaintiff's letter to Sheriff Larkin dated December 4, 2009, and Plaintiff's transfer to the Criminal Courthouse occurred on January 4, 2010. She does not point to the EEOC charge that was filed on December 31, 2010. Since the events on which her CEPA claim is based occurred prior to December 30, 2010, they are out of time.

CONCLUSION

Overall, Plaintiff has not submitted any plausible evidence of triable material facts that could lead a rational juror to find in her favor. Based on the above analysis, Defendant's summary judgment motion is granted.

ORDER

This matter having come before the Court on a motion for summary judgment brought by Defendant, The Mercer County Sheriff's Department (ECF No. 195); and the Court having considered the briefs and oral arguments of the parties; and for good cause having been shown;

IT IS on this 17th day of January, 2018;

ORDERED that Defendant's motion for summary judgment is granted.

s/Peter G. Sheridan
PETER G. SHERIDAN, U.S.D.J.

RIDER A

Black Officer's Overtime Hours

	Name	Overtime Hours 2009	Overtime 2010
1	Gloria Anderson	101.500	53.500
2	Robert Belin	4.500	20.500
3	George Bello	221.500	234.500
4	Frederick Brown	0	0
5	David Copeland	75.500	41.500
6	Anthony Conway	31.500	21.750
7	Donald Ellison	148.000	100.000
8	Howard Fowler	69.500	48.000
9	George Henderson'	79.000	283.500
10	Dywon D. Kelsey	25.500	1.000
11	Michael Orlando	119.500	61.500
12	John P. Smith	18.500	49.500
13	Troy Stevenson	61.000	40.000
14	Kenya Stocks	84.500	67.500
15	Darryl Taylor	237.500	58.000
16	Terrence Upshur	123.000	12.500
17	Carol Walton	0	0
18	Glen West	0	32.000
Total Overtime for Black Officers		1400.5	1125.25
Average per Officer		82	
Average per Officer			62.5

RIDER B

White Officer's Overtime Hours

	Name	Overtime Hours 2009	Overtime 2010
1	Phillip Altobelli	43.500	84.000
2	Joseph Armano	1 255.500	204.500
3	Bruce Armitage	72.000	31.000
4	Carmen Barbato	62.000	55.000
5	Seth Barton	188.500	86.500
6	Gregory Bezek	277.500	403.500
7	Joseph Bonfonti	139.500	110.000
8	Devin Bonifazi	19.000	19.500
9	Greg Bunting	2 250.000	241.500
10	James Ciprano	109.000	1.000
11	Christopher Clugsten	25.000	.500
12	Shane Coderoni	3 277.500	245.500
13	Robert Conover	111.000	24.500
14	Christopher Corbin	32.000	16.000
15	Jerry Cox	72.000	0
16	Dominic Cunigiano	28.000	13.000
17	Stephen Demko	181.500	69.500
18	Paul Deworocki	38.000	3.000
19	Brian Dibiasi	166.000	339.000
20	Elizabeth Dibiasi	64.000	25.000
21	Mathew Dillon	63.000	93.000
22	Edward Dinatale	71.500	11.000
23	Christopher Drew	4 335.500	278.500
24	John Fasanella	16.000	0
25	Joseph Fedor	5 302.000	273.000
26	Jeffrey Ficarro	138.000	112.500
27	James Freeman	122.500	76.500
28	Michael Gerasomowicz	0	0
29	Robert Gioscio	84.500	25.000
30	Scott Burr	157.000	144.500
31	Steven Caruso	154.500	183.500
32	William Chalker	6 203.500	267.000
33	Jennifer Glazewski	19.500	79.500
34	Christopher Gregg	117.000	30.000
35	Harry Harbourt	164.000	67.500
36	Robert Hartpence	109.500	91.000
37	Jessie Henderson	135.000	118.000
38	Joseph Herrity	0	0

(19) 11

39	Ronald Hogg	7 207.000	156.000
40	Ryan Hoy	74.500	109.000
41	Jeffrey Jantos	8 230.500	207.000
42	Neil Jantos	9 308.000	242.500
43	Robert Kelly	80.500	58.500
44	John Kemler	0	0
45	Christopher Kenyon	10 306.500	435.500
46	Jeffrey Kostoplos	63.500	52.500
47	Kevin Larkin	0	0
48	William Larkin	152.500	26.500
49	Stas Laszyk	89.000	86.500
50	Sean Lavin	174.500	63.000
51	Henry Lenartowicz	2.500	9.500
52	Allen Linkchorsk	0	0
53	Timothy Lockwood	36.500	0
54	Ralph Mackelvey	77.500	33.000
55	Christopher McKenna	66.500	70.500
56	Randy McVaugh	127.500	65.000
57	Phillip Meisner	151.500	56.000
59	Stephen Mellick	103.500	31.500
60	John Mendez	77.500	1.500
61	Joseph Mendez	110.500	73.000
62	William Miller	108.500	56.500
63	Kenneth Moretz	0	0
64	Nicolas Morgante	11 251.000	381.500
65	Carissa Mulryne	0	0
66	John Murkli	188.500	57.500
67	Suania Negron	2.000	4.000
68	James Nizolek	12 257.000	194.500
69	Carol Nolan	130.500	59.599
70	Linda Olenick	153.000	62.000
71	William Osterman	22.000	0
72	John Pacuta	2.500	0
73	Pasquale Papero	13 299.500	191.250
74	Jason Parent	166.000	84.500
75	Donald Patakula	145.500	119.000
76	George Peterson	1.000	16.500
77	James Petro	37.000	26.500
78	Michael Pintinalli	3.000	67.000
79	Richard Piotrowski	194.000	0
80	Vincent Piscotta	83.000	76.000
81	Ted Pogorzelski	121.000	74.500
82	John Powlish	75.500	0
83	Michael Presseau	84.500	113.000

84	Vincent Radice	34.000	15.000
85	Carmen Rettzo	93.500	17.000
86	Elizabeth Roberts	38.500	60.500
87	Michael Rogalski	164.500	0
88	Jason Salvatore	123.500	120.000
89	Patricia Samonski	54.000	49.000
90	Richard Samonski	87.000	58.000
91	Anibal Santos	14 216.000	180.000
92	Scott Schoellkopf	15 309.000	116.500
93	Dennis Schuster	8.000	0
94	Aaron Scholnick	0	37.000
95	Joseph Seals	97.500	26.500
97	John Seals	166.500	112.000
98	David Seidorf	17 263.000	149.500
99	Jessica Senese	16 269.000	134.000
100	Robert Septak	137.000	251.500
101	Robert Smith	199.500	89.000
102	David Smithson	18 240.000	241.500
103	Richard Soto	48.500	28.000
104	Jeremy Stewart	19 475.000	464.000
105	Thomas Sweeney	66.000	79.000
106	John Szarka	124.500	0
107	Michael Szczepanski	1.000	0
108	James Taylor	0	0
109	Christopher Tighe	13.500	64.500
100	Dennis Tobolski	0	0
111	Paul Toth	20 588.500	194.500
112	James UdiJohn	21 221.500	190.000
113	Dennis Unger	153.500	78.000
114	Vito Vacirca	52.000	32.750
115	Deana Walls	91.000	0
116	Brian Walsh	22 253.000	263.500
117	Jared Walulak	99.500	97.000
118	Kristi Weeden	0	24.000
119	Charles Werts	95.000	72.500
120	Michael Winget	23.000	16.000
121	Dean Wylie	23 212.000	388.500
122	Raymond Wysokowski	66.000	100.000
Totals		14453.5	10933.099
Average Per Officer		118	94

NAME		SENIORITY	TITLE	OVERTIME	TOTALS	MISC.
William J. Challicker		Number 6 on the Seniority List 6/15/92	Sheriff's Officer Transportation Officer	262 hours-2010 year	\$17,441.79	Race-White Gender-Male
George F. Henderson		Number 8 on the Seniority List 11/03/97	Sheriff's Officer Transportation Officer	277.500 hours 2010 year	\$18,370.69	Race-Black Gender-Male
RIDER Kelly L. Goggin		Number 78 on the Seniority List. 09/03/08	Sheriff's Officer Transportation Officer Training Officer	Avenue 23.5 30 hours 2010 year 721 hours of Training	\$1705-Avenue- \$1,156.43 County paid Training \$18,527.64	Race-White Gender-Female
Christopher M. Gregg		Number 22 on Seniority List. 08/27/01	Sheriff's Officer Transportation Officer	Avenue 15 hrs. 116.500 Thunder 84 year 2010	\$450 \$7,654.96 \$3,665.76	Race-White Gender-Male
Phillip R. Meisner		Sheriff's Officer Transportation Officer	Number 68 on the Seniority List	Avenue 41.5 hrs. 52.5 Training 28 hours	\$1135 \$3,458.28 \$1,221.92	Race-White Gender-Male
Jr.	

Prepared 9/26/16, 12 40 40
 Program PR704L
 MERCER COUNTY, NEW JERSEY
 Op/Dv/Act 2041-42J CONSTITUTIONAL/SHERIFF/PUBLIC SAFETY - JAIL

History Detail

Page 1
 Starting 12/21/2015
 Ending 12/21/2015

Employee	Description	Quantity	Amount
D ALLEN, LENDRA R	DEATH IN FAMILY	35 000	908.40
	OVERTIME	19 000	760.76
	PERSONAL	21 000	545.04
	REGULAR HOURS	1 483 500	38,503.17
	SICK	112 500	2,919.84
3. W ALTOBELLI, PHILLIP M	VACATION	175 000	4,542.00
		1 046 000	48,179.21
	OVERTIME	43 500	1,947.66
	PERSONAL	21 000	526.82
	REGULAR HOURS	1 524 000	48,474.08
2. B ANDERSON, GLORIA	SICK	94 500	2,820.69
	THUNDER	000	120.00
	VACATION	87 500	2,611.75
		1 870 500	56,601.00
	FMLA SICK	105 000	4,582.20
3. W ARMANDO, JOSEPH	FMLA VACATION	28 000	1,221.92
	OVERTIME	101 500	5,757.19
	PERSONAL	21 000	916.44
	REGULAR HOURS	1 440 500	62,563.42
	SICK	78 500	3,425.74
4. W ARMITAGE JR., BRUCE W	VACATION	154 000	6,720.56
		1 928 500	86,487.47
	ARENA	137 500	4,125.00
	MISC SHERIFF	000	545.00
	OVERTIME	255 500	13,098.70
5. W BARBATO, CARMEN M	PERSONAL	21 000	707.34
	REGULAR HOURS	1 667 000	56,149.34
	SICK	34 000	1,145.23
	THUNDER	000	450.00
	VACATION	105 000	3,535.70
		2,220 000	79,757.31
	ARENA	37 500	1,125.00
	OVERTIME	72 000	4,212.81
	PERSONAL	21 000	809.92
	REGULAR HOURS	1 605 000	41,500.20
	SICK	96 000	3,702.45
	THUNDER	000	360.00
	VACATION	105 000	4,049.55
		1 936 500	76,160.01
	OVERTIME	62 000	4,135.25
	PERSONAL	21 000	716.44
	REGULAR HOURS	1 590 500	69,540.24
	SICK	72 500	3,163.90
	VACATION	140 000	6,109.60
		1 839 000	63,865.50

T&P0001726

Prepared 3/30/11, 10:56:23

NEW JERSEY

Dp/Dv/Act

CONSTITUTIONAL/SHERIFF/PUBLIC SAFETY SALARIES

Hours History Detail

Page 2
Starting 1/08/10
Ending 12/23/10

Employee	Description	Quantity	Amount
ALLEN, LENDRA R	DOCK HOURS	14.000	00
	PERSONAL	10.500	280.67
	REGULAR HOURS	723.750	19,347.92
	BICK	53.250	1,423.83
ALTOBELLI, PHILLIP M	VACATION	80.500	2,151.99
		882.000	23,204.13
	CONVENTION/SEMINAR/TRNG	7.000	208.74
	PERSONAL	21.000	626.82
ANDERSON, GLORIA	REGULAR HOURS	1,554.000	46,384.68
	BICK	84.000	2,507.28
	THUNDER	84.000	135.00
	VACATION	84.000	2,507.28
ARMAND, JOSEPH		1,750.000	52,370.00
	OVERTIME	52.500	3,495.18
	PERSONAL	21.000	916.44
	REGULAR HOURS	1,520.000	46,332.80
ARMITAGE JR., BRUCE W	BICK	90.000	3,927.60
	VACATION	119.000	5,193.16
		1,802.500	79,869.18
	ARENA	103.250	3,097.50
BARBATO, CARMEN M	CONVENTION/SEMINAR/TRNG	63.000	2,122.02
	JURY DUTY	7.000	235.78
	MISC SHERIFF	199.500	1,700.00
	OVERTIME	21.000	10,227.75
BARBATO, CARMEN M	PERSONAL	1,486.000	707.34
	REGULAR HOURS	26.000	50,052.74
	SICK	14.000	875.75
	THUNDER	133.000	420.00
BARBATO, CARMEN M	UNION TIME OFF	2,052.750	471.86
	VACATION	42.000	4,479.82
	CONVENTION/SEMINAR/TRNG	30.000	74,390.26
	OVERTIME	21.000	1,619.82
BARBATO, CARMEN M	PERSONAL	1,513.500	1,755.33
	REGULAR HOURS	88.500	809.91
	BICK	85.000	58,371.39
	VACATION	1,780.000	3,413.20
BARBATO, CARMEN M	CONVENTION/SEMINAR/TRNG	42.000	3,278.21
	OVERTIME	53.500	69,247.86
	PERSONAL	21.000	1,832.88
	REGULAR HOURS	1,538.000	3,568.33
BARBATO, CARMEN M	BICK	51.000	916.44
	VACATION	98.000	67,118.32
		1,803.500	2,225.44
			4,276.72
BARBATO, CARMEN M			79,938.33